IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

REVIEW PETITION NO. 6 OF 2004
IN
FIRST APPEAL (ST) NO. 40998 OF 2004

Sanjay M. Joshi & ors. ... Petitioners

V/s

Milind M. Joshi ... Respondent

Shri P.B. Shah for the petitioners.

None present for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 3RD DEC., 2004.
Not on board.

P.C.:

1. Heard learned counsel for the petitioners. None present for the respondents though duly served.

2. The order dated 11.12.2003 passed by this Court is sought to be reviewed on the ground that order was obtained on wrong statement of fact. The impugned order reads thus -

> "Shri R.M. Patne with Shri S.R. Nargolkar for the appellant. Mrs. Aarti P. Bhide for respondent Nos. 1 to 3.
>
> Not on board. Mentioned.

> Shri Patne states that there is settlement between the parties and he has instruction to withdraw the appeal. Accordingly, permission to withdraw the appeal is granted and the appeal is disposed of as withdrawn.
>
> Shri Patne further prays for withdrawal of the counter-claim filed by the appellants in the Trial Court which came to be decreed. However, as the condition of the settlement, the appellants are required to withdraw the counter-claim in Special Civil Suit No. 1517 of 1996."

This order was passed on 11.12.2003. Shri Shah, learned counsel for the petitioners submits that counter-claim came to be decreed and was subject matter of the appeal, however, at no time its withdrawal was term of settlement of appeal itself.

3. Now, it is clear that the appeal itself was settled and withdrawn on the basis of statement made on behalf of the appellant. However, the counter-claim filed by the appellant in the Trial Court which was decreed, was never decided to be withdrawn by the parties and, therefore, this order is said to be reviewed.

4. In view of the facts and circumstances, the order regarding withdrawal of the appeal need not be disturbed. However, the latter part i.e. regarding counter-claim is required to be recalled in the interest of justice.

5. Hence, the application is made absolute in terms of prayer clause (a) to the extent that the latter part of the order dated 11.12.2003 relating to the counter-claim stands recalled and the counter-claim shall proceed for hearing as per the law.

With these observations, the review petition stands disposed of with no order as to costs.

.....